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Petition and Transcript of Record

Supreme Court of the United States

OCTOBER TERM, 1929

No. 127

UNIVERSAL BATTERY COMPANY, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JUNE 4, 1929

CERTIORARI GRANTED OCTOBER 14, 1929

(34,258)

(34,258)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 127

UNIVERSAL BATTERY COMPANY, PETITIONER,

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THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 11, 1929

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[fol. 1]

IN SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 127

UNIVERSAL BATTERY COMPANY, Petitioner,

vs.

THE UNITED STATES, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The above petitioner prays that a writ of certiorari issue to review the judgment of the Court of Claims entered herein on December 3, 1928, dismissing the petitioner's petition. The petitioner's motion for a new trial seasonably made was overruled on March 11, 1929.

Question Involved

Were the storage batteries sold by the petitioner automobile "parts or accessories" within the purview of section 900 of the Revenue Acts of 1918 and 1921, and the regulations of the Commissioner of Internal Revenue issued pursuant thereto?

The Court below decided the question adversely to the petitioner, dismissing its petition to recover the amount paid as manufacturers excise taxes on such batteries.

Statutes Involved

The Revenue Act of 1918 (c. 18, 40 Stat. 1057) and the Revenue Act of 1921 (c. 136, 42 Stat. 227) contain identical provisions with respect to the question involved in this case and are as follows:

[fol. 2] "Section 900. On and after February 1, 1919, [1918 Act] ["January 1, 1922," 1921 Act] there shall be

levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following per cent of the price for which so sold or leased:

"(1) Automobile trucks and automobile wagons (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or the sale thereof) three per centum.

"(2) Other automobiles and motor cycles (including tires, inner tubes, parts, and accessories therefor sold on or in connection therewith or with the sale thereof), except tractors, five per centum.

"(3) Tires, inner tubes, parts or accessories for any of the articles enumerated in subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), five per centum."

Regulations 47 promulgated by the Commissioner of Internal Revenue, in pursuance of the authority granted by Congress, provided in part as follows:

"Art. 14. * * * Any article which has reached a state of manufacture wherein it is in itself a component part or accessory, and is of such a nature that it may be used or attached by an ordinary repair man or individual user as distinguished from a manufacturer or producer, is subject to tax as a 'part' or 'accessory.'"

* * * * * * *

"Art. 15. * * * any article designed or manufactured for the special purpose of being used as or to replace a component part of any such vehicle and which by reason of some peculiar characteristic is not such a commercial commodity as would ordinarily be sold for general use and which is primarily adapted only for use as component part of such vehicle."

* * * * * * *

[fol. 3] "Articles, however, which ordinarily would be classed as commercial commodities, become parts when,

because of their design or construction, they are primarily adapted for use as component parts of such vehicles."

"Component parts of articles taxable under this definition are taxable when sold separately, if they have reached such stage of manufacture that they are primarily adapted for use as such a component part."

* * * * * * *

"Art. 16. * * * any article designed to be attached to or used in connection with such vehicle to add to its utility or ornamentation and which is primarily adapted for use in connection with such vehicle, whether or not essential to its operation."

* * * * * * *

"Articles which have a general commercial use and which are not especially designed and peculiarly adapted for use in connection with automobile trucks, automobile wagons, other automobiles, or motor cycles are not subject to tax as 'parts' or 'accessories.'"

Statement

The facts in this case are fully set out in the Special Findings of Fact (R. 17-21) made by the Court below. In brief they are:

The petitioner is a corporation organized under the laws of Illinois. It is, and has been since 1913, manufacturing and selling storage batteries and storage battery parts. During the period from March 3, 1919, to October 30, 1923, the petitioner paid to the respondent manufacturers excise taxes, penalties and interest in the sum of $27,872.61, upon the sale of storage batteries under section 900, subdivision (3), of the Revenue Acts of 1918 and 1921. The Commissioner of Internal Revenue, on May 15, 1924, denied a refund claim for this amount with interest. The petitioner brought action in the Court of Claims on October 3, 1924, for the refund claimed except for $2,566.31, admittedly barred by the statute of limitations. (R. 17-21.)

The batteries sold by petitioner, during the period in question, were of the same type and kind as had been used, [fol. 4] long before the advent of the automobile, in in-

numerable mechanical devices, where a readily accessable flow of electric current is required. Prior and subsequent to the employment of such batteries in the automobile they were used in signal apparatus, stationary gasoline engines, motor boats, tractors, lighting plants, airplanes, mining cars, railway switches, wireless, telephones, telegraph, radios, fire alarms, door bells, electroplating, etc. (R. 19-20).

A technical description of the composition of the batteries manufactured by the petitioner can be found in the Special Finding of the court below (R. 19).

The batteries manufactured by the petitioner reached the consumer through battery distributors, jobbers, radio dealers, garage men and accessory dealers. The petitioner could not know to what use its batteries would be put when sold by it. The petitioner cannot tell what percentage of its batteries are used for any particular purpose (R. 20, Par. IX).

No automobile required petitioner's batteries as standard equipment. Any one of the several types of batteries manufactured by the petitioner could be adapted for use in some make of automobile. None of the batteries were made for use in any particular automobile unless the purchaser specifically requested it. Some arrangements of cells might limit the petitioner's batteries to some automobiles but would not limit them for the other uses (R. 20, Par. X).

The terminals on a battery determine the purpose for which the battery may be used. The petitioner did not manufacture such terminals. Ninety-nine per cent of its product left its factory without any terminals. The petitioner did not know what sort of terminals were going on its batteries after they were sold (R. 20, Par. XI). It does not appear that the petitioner's batteries were especially designed or primarily adapted for use on any of the vehicles designated in the taxing statute.

Reasons for Granting the Writ

1. One hundred and seven suits involving $2,691,993.42, are pending in the Court of Claims alone on the sole question of whether articles taxed are "parts or accessories" of automotive vehicles.

2. The decisions of the Court of Claims already rendered on like questions are confusing, difficult, if not impossible,

of reconciliation and do not appear to be applying uniform tests of principle.

[fol. 5] 3. The Supreme Court has not construed the Sections of the Revenue Acts of 1918, 1921, or 1924 under which these taxes were levied. No substantially equivalent cases have been decided here since Magone vs. Wiederer, 159 U. S. 555, in 1894.

4. The decision of the United States District Court for the Eastern District of Pennsylvania in Philadelphia Storage Battery Co. v. Lederer, 21 Fed. 2d 320, is in conflict with the Court of Claims decision in the instant case. The government has refused to appeal this decision to a Circuit Court.

5. As the result of this situation actions are being contested in the Court of Claims and probably in other Courts which actions could be concluded by confessions of judgment, or by voluntary dismissal, if the parties were afforded by this court an authoritative and clear standard upon which to judge the merits.

6. In the instant case the Court of Claims decided that the term "parts or accessories" of certain automotive vehicles includes a device not found to be specially designed for use in such vehicles, not found to be primarily adapted for use in such vehicles, but found to be a commercial commodity ordinarily and customarily sold for many general uses other than in automotive vehicles.

7. The sole authority assigned by the Court below is its own decision in Cole Storage Battery Co., 65 Ct. Cls. 164. The determinative facts in that case are so obviously absent in this that error is apparent.

8. It is believed that the decision of the Court of Claims is in conflict with the principles laid down by this court in Magone vs. Wiederer, 159 U. S. 555; Magone vs. Heller, 150 U. S. 70, and Worthington vs. Robbins, 139 U. S. 337.

Wherefore it is respectfully submitted that this petition should be granted.

George Maurice Morris, 815 Fifteenth Street N. W., Washington, D. C. Of Counsel: KixMiller, Baar & Morris.

[fol. 1] IN COURT OF CLAIMS

D-785

UNIVERSAL BATTERY COMPANY

vs.

THE UNITED STATES

1. PETITION—Filed October 3, 1924

To the Honorable Judges of the United States Court of Claims:

1. Your petitioner, Universal Battery Company, by Harry C. Kinne, its attorney, respectfully represents that it is a corporation organized and doing business under the laws of the State of Illinois with principal offices in the City of Chicago, County of Cook, and State of Illinois.

2. Your petitioner further represents that Section 900 of the Revenue Act of 1918 provides as follows:

"That there shall be levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following percentages of the price for which so sold or leased—

"(1) Automobile trucks and automobile wagons (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or with the sale thereof), 3 per centum;

"(2) Other automobiles and motorcycles (including tires, inner tubes, parts, and accessories therefor, sold on or in [fol. 2] connection therewith or with the sale thereof), except tractors, 5 per centum;

"(3) Tires, inner tubes, parts, or accessories, for any of the articles enumerated in subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), 5 per centum."

Section 1309 of said Revenue Act provides as follows:

"That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and

regulations for the enforcement of the provisions of this Act."

3. Your petitioner further represents that the material corresponding provisions of the Revenue Act of 1921 and the Regulations of the Commissioner of Internal Revenue are identical, for the purpose of this cause, with the provisions of the Revenue Act of 1918 herein set forth with the exception of the effective date which in respect to the Act of 1921 is January 1, 1922.

4. Your petitioner further represents that thereafter the Commissioner of Internal Revenue did promulgate, and the Secretary of the Treasury did approve, the following regulations, the same being what is known as Regulations Number 47, Articles 1, 14, 15, and 16 wherein the effective date of said act is designated and an automobile part or accessory is defined as follows: (We have set forth herein only such portions of said regulations as are material to this cause.)

"Article 1. Effective date.—The tax is imposed on all articles sold or leased by the manufacturer, producer, or importer on or after February 25, 1919, even though manufactured, produced, or imported before that date."

[fol. 3] "Article 14. Tires, inner tubes, parts, and accessories sold to manufacturers.—The words 'tires, inner tubes, parts or accessories' shall be understood to embrace only such tires, inner tubes, parts, or accessories as have reached such a stage of manufacture that they constitute articles commonly or commercially known as 'tires, inner tubes, parts, or accessories,' and shall not be understood to embrace raw materials used in the manufacture of such articles. Unvulcanized sheet rubber, liquid rubber vulcanizing cement, and friction fabrics are considered raw materials and are exempt from tax. Any article which has reached a state of manufacture wherein it is in itself a component part or accessory and is of such a nature that it may be used or attached by an ordinary repair man or individual user as distinguished from a manufacturer or producer is subject to tax as a 'part or accessory.' * * *"

"Article 15. Definition of parts.—A 'part' for an automobile truck, automobile wagon, other automobile, or

motorcycle is any article designed or manufactured for the special purpose of being used as or to replace a component part of any such vehicle, and which by reason of some peculiar characteristic is not such a commercial commodity as would ordinarily be sold for general use, and which is primarily adapted only for use as a component part of such vehicle. The term includes bodies, wheels, engines, springs, axles, radiators, etc. When sold separately a side car and a so-called trailer or 'semi-trailer' so designed that a portion of the load or the weight thereof is carried or borne by the tractor or 'semi-tractor,' are taxable as 'parts.' Mere stock or commercial commodities, such as bolts, nuts, washers, screws, etc., though used as components for such vehicles, are not 'parts' within the meaning of subdivision (3). Articles, however, which ordinarily would be classed as commercial commodities become parts when, because of their design or construction, they are primarily adapted for use [fol. 4] as component parts of such vehicles. Component parts of articles taxable under this definition are taxable when sold separately, if they have reached such stage of manufacture that they are primarily adapted for use as such a component part. * * *"

"Article 16. Definitions of accessories.—An 'accessory for an automobile truck, automobile wagon, other automobile, or motorcycle is any article designed to be attached to or used in connection with such vehicle to add to its utility or ornamentation and which is primarily adapted for use in connection with such vehicle, whether or not essential to its operation. The term 'accessories' includes, for example, automobile tops, back and side curtains, horns, speedometers, self-starters, spot lights, shock absorbers, tire pumps, and pressure gauges. Articles which have a general commercial use and which are not especially designed and peculiarly adapted for use in connection with automobile trucks, automobile wagons, other automobiles, or motorcycles are not subject to tax as 'parts or accessories.' Thus a wrench or other tool of a kind ordinarily sold in hardware stores for general purposes is not subject to tax when sold separately, but if incorporated in an automobile tool kit, is taxable as part of the complete kit. A wrench or other tool of special design or construction primarily adapted for use in connection with automobiles is

taxable. If any doubt exists as to the special adaptability of any article, the fact of its sale by the manufacturer to be used with an automobile, or to an automobile accessories dealer, would determine its taxability. Robes, goggles and lunch kits are not subject to tax. Asbestos brake band linings, generator tubing, and radiator hose are not subject to tax unless sold in prepared sizes, lengths, shapes, or with such fittings as make them adapted for use only on or in connection with automobiles. Parts or accessories for automobile trucks, automobile wagons, other automobiles [fol. 5] or motorcycles primarily adapted for use on or in connection therewith when sold for any other purpose are not taxable provided the purchaser files with his order a statement that such parts or accessories are to be used on or in connection with another article of commerce not enumerated or included in subdivisions (1), (2) or (3) of Section 900. * * *"

5. Your petitioner further represents that Section 1316 of the Revenue Act of 1921 amending Section 3220 of the United States Revised Statutes provides as follows:

"The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; * * *, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section."

6. Your petitioner further represents that it is now and has been for more than five (5) years last past, engaged in the manufacture and sale of storage batteries and that it has paid, involuntarily, the manufacturer's sales tax on all of the batteries so manufactured and sold by it during the term as stated in the claim for refund hereinafter set forth.

7. Your petitioner further represents that on January 15, 1924, it filed its claim for refund of said taxes, including interest, in the sum of Thirty-four Thousand Two Hundred Eighty-two Dollars and Fourteen Cents ($34,282.14), a

[fol. 6] copy of which claim for refund is hereto attached, marked Exhibit "A" and made a part hereof. A portion of said claim, to wit, Twenty-seven Thousand Eight Hundred Forty-one Dollars and Thirty-five Cents ($27,841.35) represents taxes paid by your petitioner on sales of completed storage batteries. (See total of Column 3, Exhibit "A.") Three Thousand Four Hundred Three Dollars and Sixty-two Cents ($3,403.62) of said claim represents interest claimed by petitioner on Twenty-six Thousand Eight Hundred Nine Dollars and Eighty-two Cents ($26,809.82), an amount refunded to your petitioner for taxes and penalties paid on battery parts sold separately by your petitioner. (See Exhibit "A," Column 4, plus penalties and interest.) The balance of said claim represents interest claimed by petitioner on taxes paid by it on completed storage batteries, pursuant to the 1918 and 1921 Revenue Acts. Petitioner now claims interest on said taxes paid on completed storage batteries, pursuant to the 1924 Revenue Act hereinafter set forth, from the date of such payments to the date of final allowance by this court.

8. Your petitioner further represents that on April 5, 1924, said entire claim for refund was rejected by the Honorable Commissioner of Internal Revenue.

9. Your petitioner further represents that it is now the sole owner of said claim for refund and that said claim has never been assigned to any other person whomsoever.

10. Your petitioner further represents that said batteries so manufactured and sold by it are not now, and never were "primarily adapted" for use only in automobiles, as provided in Section 900, (1), (2), or (3) of said Revenue Acts of 1918 and 1921; that on the contrary said storage bat-
[fol. 7] teries are now, and were always, used for the following, as well as many other, purposes:

For radios, for farm or cottage lighting plants, for propelling railway mail and baggage trucks, for propelling motor boats, in connection with stationary engines, tractor engines, marine engines, for lighting railway coaches, for lighting and starting gasoline railway coaches, in connection with door bells, telephones and telegraphs.

11. Your petitioner further represents that by reason of the facts herein set forth the storage batteries, so manufactured by it, were and are commercial commodities and were not, and are not now, "primarily adapted only" for use in automobiles; that they have not reached, and none of them ever did reach, such a stage of manufacture that they are, or were, in themselves component parts of automobiles as provided in said Revenue Act and Regulations.

12. Your petitioner, therefore, states that it is justly entitled to the amount herein claimed from the United States, after allowing all just credits and set-offs.

13. Your petitioner further represents that it has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said government and that it believes the facts as herein set forth are true.

14. Section 1019 of the Revenue Act of 1924 provides as follows:

"Upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of [fol. 8] any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term 'additional assessment' as used in this section means a further assessment for a tax of the same character previously paid in part."

15. Your petitioner further represents that the above-mentioned sum of Twenty-six Thousand Eight Hundred Nine and 82/100 Dollars ($26,809.82) (see Exhibit "A," Column 4, plus penalties and interest), represents the sales tax, penalties and interest illegally and erroneously col-

lected by the Collector of Internal Revenue of the United States from petitioner on battery parts manufactured separately and sold by it during the years of 1919 to 1922, in the amounts and on the dates as set forth in Column 4 in said Exhibit "A," plus penalties and interest, for which total sum a claim for refund was filed by petitioner, and allowed by the Commissioner of Internal Revenue on or about July 19, 1922, and afterwards repaid to petitioner.

16. Your petitioner further represents that Section 1324 of the Revenue Act of 1921 provides as follows:

(a) "That upon the allowance of a claim for the refund of or credit for, internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate of one-half of 1 per centum per month to the date of such allowance, as follows: (1) if such amount was paid under a specific protest setting forth in detail the [fol. 9] basis of and reasons for such protest, from the time when such tax was paid, or (2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or (3) if no protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit. The term 'additional assessment' as used in this section means a further assessment for a tax of the same character previously paid in part."

17. Your petitioner further represents that an additional assessment of excise taxes in the sum of approximately Thirty-one Dollars and Twenty-six Cents ($31.26), same being a further tax of the same character previously paid in part, was made against your petitioner for the month of November, 1919, pursuant to notice, and paid by your petitioner on or about August 16, 1920.

18. Your petitioner claims interest in the said sum of Three Thousand Forty-two Dollars and Ninety-nine Cents ($3,042.99), being interest, after crediting the United States with Three Hundred Sixty Dollars and Sixty-three Cents ($360.63), interest allowed and paid to petitioner at the time of said refund, on that part of said sum of Twenty-six Thousand Eight Hundred Nine Dollars and Eighty-two

Cents ($26,809.82), which was paid prior to the date of the payment of the additional assessment, from the date of the payment of said additional assessment to the date of the allowance of claim, and on that part of the Twenty-six Thousand Eight Hundred Nine Dollars and Eighty-two Cents ($26,809.82) paid after the payment of the additional assessment from the date of payment to the date of the allowance of the claim.

[fol. 10] 19. Your petitioner therefore prays that the above claim for interest in the sum of Three Thousand Forty-two Dollars and Ninety-nine Cents ($3,042.99) on said taxes already refunded and the above claim for taxes paid by it on completed storage batteries in the sum of Twenty-seven Thousand Eight Hundred Forty-one Dollars and Thirty-five Cents ($27,841.35) with interest thereon, pursuant to Section 1019 of the 1924 Revenue Act, may be allowed against the United States by this honorable court; and that such other orders may be entered herein as may be just and equitable.

Universal Battery Co., Louis C. Maury, President.

Duly sworn to by Louis C. Maury. Jurat omitted in printing.

[fol. 11] EXHIBIT "A" TO PETITION

Claim for Abatement of Tax Assessed, Credit Against Outstanding Assessments, Refund of Taxes Illegally Collected, Refund of Amounts Paid for Stamps Used in Error or Excess

STATE OF ILLINOIS,
County of Cook, ss:

Universal Battery Company, Chicago, Illinois, care of K. D. Holland, 1006-139 N. Clark St., Chicago, Ill.

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

From: February, 1919,
To: September, 1923.

1. Business in which engaged, batteries and parts.
2. Character of assessment or tax, excise tax. (State for or upon what the tax was assessed or the stamps affixed.)
3. Amount of assessment or stamps purchased, $—.
4. Reduction of Tax Liability requested (Income and Profits Tax), $—.
5. Amount to be abated, $—.
6. Amount to be refunded (or such greater amount as is legally refundable), $34,282.14.
7. Dates of payment (see Collector's receipts or indorsements of canceled checks), $—. (If statement covers income tax liability, items 8-11, inclusive, must be answered.)
8. District in which return (if any) was filed, Chicago.
9. District in which unpaid assessment appears, none.
10. Amount of overpayment claimed as credit, none.

[fol. 12] 11. Unpaid assessment against which credit is asked; period from —— —, to ——, $—.

Deponent verily believes that this application should be allowed for the following reasons:

That $27,841.35 of the amount indicated above represents taxes paid on batteries for the period indicated above and is claimed in refund for the reason that the batteries manufactured by claimant are exempt from the tax imposed by Section 900, Subdivision 3, Revenue Acts of 1918 and 1921 in accordance with rulings of the Commissioner of Internal Revenue with reference to automobile parts and accessories. Said batteries manufactured by it are commercial commodities not designed or manufactured with some peculiar characteristic making them primarily adaptable for use on automobiles. The attached Exhibit "A" sets forth the amount of tax paid by months. The balance of the excise tax paid by claimant was paid on battery parts as indicated on Exhibit "A" and was refunded to claimant under claim No. 253659 ST-R-466.

The amount indicated above also includes the total interest due in the sum of $6,409.53 computed from the date of the payment of the additional assessment in the amount of $31.26 paid on August 16, 1920, as evidenced by photostat copy of receipt attached hereto and marked Exhibit 1.

Claimant contends that there is additional interest due on refund paid on ST-R-466 and that the interest on battery payments is properly computed (Exhibit "A") for the rea-

son that Section 1324 of the Revenue Act of 1921 provides among other things as follows:

"That upon the allowance of a claim for refund or credit for internal revenue taxes paid, interest shall be allowed and paid on the total amount of such refund or credit at the rate of one-half of one per cent (1%) per month to the date of such allowance as follows:

"(1) If such amount was paid under a specific protest setting forth the basis of, and reasons for, such protest from the time when such tax was paid, or

[fol. 13] "(2) If such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, * * *

"The term 'additional assessment' as used in this section, means a further assessment for a tax of the same character previously paid in part."

On August 16, 1920 (see Exhibit 1), claimant paid an additional assessment as a penalty for delinquency in paying tax to cover the November, 1919, period.

The above partially quoted Section 1324 of the Revenue Act of 1921, contemplates that taxpayers shall receive interest upon the total amount of such refund from the date of the payment of the additional assessment August 16, 1920, to April 8, 1923, the date of the allowance of claim No. 253659.

Claimant claims:

(a) Interest in the sum of $2,442.83 (column 8, line 1, Exhibit "A" on the total amount of $15,395.98 (column 5, line 1, Exhibit "A") paid prior to August 16, 1920 (the date of payment of additional assessment), computed from said date to April 8, 1923, the date of the allowance of claim No. 253659 covering battery parts.

(b) Interest in the total sum of $2,845.94 (column 8, line 20, Exhibit "A") computed on each subsequent payment from August 16, 1920 (date of additional assessment), to the date of the allowance of claim No. 253659 (April 8, 1923).

(c) Interest in the total sum of $642.21 computed on $14,166.34 (column 3, line 20, Exhibit "A") (total tax paid

on batteries prior to January 1, 1922), from April 8, 1923 (date of allowance of claim No. 253659, covering battery parts), to January 10, 1924 (date of preparation of this claim).

(d) Interest in the total sum of $859.18 (column 8, line 41, Exhibit "A") computed on monthly payments of taxes on batteries from the date of each payment between January 1922, and September, 1923 (see column 2, lines 2 to 42, Exhibit "A"), to January 10, 1924 (date of preparation of this claim).

[fol. 14] Each payment made subsequent to the date of the payment of the additional assessment was made under and in accordance with notice and demand covering the assessment which was paid August 16, 1920, under threat of the imposition of the penalty should subsequent payments not be made by the last day of the month following the month in which sales were made.

Credit is given for interest allowed on claim No. 253659 for refund from October 8, 1922, to April 8, 1923, as set forth in Exhibit "A" and amounting to $360.63. The amount of the claim also includes the sum of $31.25 penalties paid on August 16, 1920.

There are attached photostat copies of receipts, Exhibits 2 to 20, inclusive, evidencing payment of taxes on sales of batteries for the period from March, 1922, to September, 1923, inclusive. The receipts evidencing payment of taxes for the months of January and February, 1922, are now in your possession attached to claim No. 253659.

Claimant contends that there should also be included in the total amount refunded interest on the total amount claimed as refund of taxes on batteries computed for the period from January 10, 1924, to the date of the allowance of the claim.

(Signed) Universal Battery Co., by K. D. Holland, Agent.

Sworn to and subscribed before me this 15th day of January, 1924. Marian McLaughlin, Notary Public. (Seal.)

(Here follows side folio page 15)

[fol 15]

Period for which tax was paid Prior to	Date paid Prior to	Tax paid on batteries	Tax paid on parts	Total t paid
Aug. 16-20	Aug. 16-20	$6,208.60	$9,187.38	$15,395
Nov. 1919	Aug. 16-20	.....	.....	31
Aug. 1920	Sept. 30-20	396.50	1,005.20	1,401
Sept. "	Oct. 30-20	352.50	1,074.14	1,426
Oct. "	Nov. 30-20	387.62	926.62	1,314
Nov. "	Dec. 30-20	516.48	952.01	1,468
Dec. "	Jan. 30-21	313.21	962.76	1,275
Jan., 1921	Feb. 28-21	159.89	559.10	718
Feb. "	Mar. 30-21	340.81	983.41	1,324
Mar. "	Apr. 30-21	847.47	1,329.57	2,177
Apr. "	May 30-21	492.30	1,192.79	1,685
May "	June 30-21	518.93	1,076.48	1,595
June "	July 30-21	526.38	1,031.89	1,558
July "	Aug. 30-21	507.08	952.92	1,460
Aug. "	Sept. 30-21	615.59	1,241.75	1,857
Sept. "	Oct. 30-21	617.08	1,283.45	1,900
Oct. "	Nov. 30-21	644.02	1,280.56	1,924
Nov. "	Dec. 30-21	422.09	920.36	1,343
Dec. "	Jan. 30-22	298.94	849.43	1,148
		$14,166.34	$26,809.82	$41,007
Jan. 1922	Feb. 28-22	454.78	.....	454
Feb. "	Mar. 31-22	[illegible]	[illegible]	[illegible]

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[fol. 16] II. General Traverse—Filed Dec. 3, 1924

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by Rule 34.

III. Argument and Submission

On February 23, 1928, this case was argued and submitted on merits by Mr. Harry C. Kinne, for plaintiff, and by Mr. R. C. Williamson, for defendant.

[fol. 17] IV. **Special Findings of Fact, Conclusion of Law—Filed December 3, 1928**

This case having been heard by the Court of Claims the court, upon the evidence and the report of a commissioner makes the following

Special Findings of Fact

I

The plaintiff is a corporation duly incorporated under the laws of the State of Illinois with its principal place of business in Chicago, in the State of Illinois, and is now and has been since 1913 engaged in the manufacture of storage batteries and storage battery parts.

II

By various payments beginning March 30, 1919, and ending October 30, 1923, plaintiff paid the United States Government manufacturer's excise taxes, penalties, and interest in the sum of $54,682.43, under section 900, subdivision (3) of the revenue acts of 1918 and 1921 on completed storage batteries and battery parts sold separately. On or about July 19th, 1923, plaintiff obtained a refund in the sum of $26,809.82, being that portion of the above amount

which it had paid as excise taxes on battery parts sold separately, leaving the amount of $27,872.61. Of this sum, $2,566.31, paid prior to four years preceding January 15th, 1924, is barred by the statute of limitations, leaving the sum of $25,306.30. Prior to August 16, 1920, the date of the payment of the above assessment, plaintiff had paid the sum of $9,187.38 as taxes on the gross sales of battery parts.

III

On August 16, 1920, plaintiff paid the sum of $31.26 assessed against it by the Treasury Department as penalties for the late payment of, and in addition to, the five per cent gross sales tax for the month of November, 1919.

[fol. 18] IV

The following is a statement of the dates and amounts of payments of taxes on completed storage batteries and storage-battery parts by plaintiff:

Period for which paid	Date paid	Date receipt issued	Tax paid on batteries	Tax paid on parts	Total tax paid
March, 1919	Mar. 30, 1919	June 7, 1919	$680.42	$102.68	$783.10
April, 1919	Apr. 30, 1919	June 17, 1919	402.25	423.85	826.10
May, 1919	May 30, 1919	July 9, 1919	346.68	480.47	827.15
June, 1919	June 30, 1919	Aug. 6, 1919	122.81	414.79	537.60
July, 1919	July 30, 1919	Sept. 6, 1919	90.56	493.72	584.28
August, 1919	Aug. 30, 1919	Oct. 8, 1919	229.92	467.55	697.47
September, 1919	Sept. 30, 1919	Nov. 12, 1919	77.87	487.74	565.41
October, 1919	Oct. 30, 1919	Dec. 4, 1919	207.20	608.17	815.37
November, 1919	Nov. 30, 1919	Jan. 21, 1920	147.66	477.59	625.25
December, 1919	Dec. 30, 1919	Jan. 26, 1920	161.14	475.23	636.37
			$2,566.31	$4,431.79	$6,998.10
January, 1920	Jan. 30, 1920	(1)	204.67	603.00	807.67
February, 1920	Feb. 29, 1920	(1)	130.65	608.39	739.04
March, 1920	Mar. 30, 1920	(1)	808.92	765.73	1,574.65
April, 1920	Apr. 30, 1920	June 12, 1920	819.58	749.00	1,568.62
May, 1920	May 30, 1920	July 7, 1920	732.86	829.76	1,562.62
June, 1920	June 30, 1920	Aug. 16, 1920	628.51	438.08	1,066.59
July, 1920	July 30, 1920	Sept. 4, 1920	417.06	761.63	1,178.69
	Aug. 16, 1920	.....	(Assessment for penalties paid)		
			$6,208.60	$9,187.38	$15,395.98

[1] No receipts issued by the Government for these 3 months were produced in evidence.

Period for which paid	Date paid	Date receipt issued	Tax paid on batteries	Tax paid on parts	Total tax paid
August, 1920	Sept. 30, 1920	Oct. 8, 1920	396.50	1,005.20	1,401.70
September, 1920	Oct. 30, 1920	Nov. 6, 1920	352.50	1,074.14	1,426.64
October, 1920	Nov. 30, 1920	Dec. 14, 1920	387.62	926.62	1,314.24
November, 1920	Dec. 30, 1920	Jan. 10, 1921	516.48	952.01	1,468.49
December, 1920	Jan. 30, 1921	Feb. 16, 1921	313.21	962.76	1,275.97
January, 1921	Feb. 28, 1921	Mar. 10, 1921	159.89	559.10	718.99
February, 1921	Mar. 30, 1921	Apr. 7, 1921	340.81	983.41	1,324.22
March, 1921	Apr. 30, 1921	May 5, 1921	847.47	1,329.57	2,177.04
April, 1921	May 30, 1921	June 15, 1921	492.30	1,192.79	1,685.09
May, 1921	June 30, 1921	July 13, 1921	518.93	1,076.48	1,595.46
June, 1921	July 30, 1921	Aug. 11, 1921	526.38	1,031.89	1,558.27
July, 1921	Aug. 30, 1921	Sept. 3, 1921	507.08	952.92	1,460.00
August, 1921	Sept. 30, 1921	Oct. 4, 1921	616.59	1,241.75	1,857.34
September, 1921	Oct. 30, 1921	Oct. 27, 1921	617.08	1,283.45	1,900.53
October, 1921	Nov. 30, 1921	Dec. 3, 1921	644.02	1,280.56	1,924.58
November, 1921	Dec. 30, 1921	Jan. 4, 1922	422.09	920.36	1,343.25
December, 1921	Jan. 30, 1922	Jan. 30, 1922	298.94	849.43	1,148.37
			$14,166.34	$26,809.82	$40,976.16
	Aug. 16, 1920	.....	31.26	.....	31.26
			$14,197.60	.....	$41,007.16
January, 1922	Feb. 28, 1922	Mar. 1, 1922	454.78	.....	454.78
February, 1922	Mar. 31, 1922	Apr. 1, 1922	427.37	.....	427.37

March, 1922	Apr. 27, 1922	Apr. 28, 1922	768.17	.....	768.17
April, 1922	May 29, 1922	June 3, 1922	923.82	.....	923.82
May, 1922	June 30, 1922	July 10, 1922	862.90	.....	862.90
June, 1922	July 28, 1922	Aug. 2, 1922	680.26	.....	680.26
July, 1922	Aug. 29, 1922	Sept. 8, 1922	601.93	.....	601.93
August, 1922	Sept. 30, 1922	Oct. 4, 1922	679.41	.....	679.41
September, 1922	Oct. 30, 1922	Nov. 9, 1922	782.00	.....	782.00
October, 1922	Nov. 29, 1922	Dec. 7, 1922	734.89	.....	734.89
November, 1922	Dec. 29, 1922	Jan. 4, 1923	618.85	.....	618.85
December, 1922	Jan. 29, 1923	Feb. 1, 1923	496.74	.....	496.74
January, 1923	Feb. 28, 1923	Mar. 7, 1923	656.71	.....	656.71
February, 1923	Mar. 29, 1923	Apr. 6, 1923	483.70	.....	483.70
March, 1923	Apr. 28, 1923	May 5, 1923	741.48	.....	741.48
April, 1923	May 29, 1923	June 6, 1923	862.37	.....	862.37
May, 1923	June 28, 1923	July 6, 1923	685.37	.....	685.37
June, 1923	July 31, 1923	Aug. 14, 1923	518.73	.....	518.73
July, 1923	Aug. 31, 1923	Sept. 12, 1923	516.22	.....	516.22
August, 1923	Sept. 29, 1923	Oct. 4, 1923	556.48	.....	556.48
September, 1923	Oct. 31, 1923	Nov. 1, 1923	622.83	.....	622.83
			$27,872.61	.....	$54,682.43

[fol. 19] V

A storage battery such as is involved here is composed of a container (a glass or rubber jar), a positive and negative group of plates immersed in an electrolyte solution (which may be acid or alkaline, depending on the metals used), usually dilute acid, one group of which plates is usually made of red oxide or dioxide of lead and the other group of gray oxide of lead. The oxides usually are spread over a lead frame or grid to form a plate. They are the active ingredients. The dioxide and acid are decomposed and form a new sulphate with the other plate. Small wooden partitions or squares, called separators, are inserted between the plates to keep them from touching, buckling together, or shorting. The negative plates are connected together, as are also the positive plates. A top is put on the jar and sealed over with sealing wax, leaving a terminal post exposed. A cell is composed of a certain number of positive and negative plates.

A battery may consist of one or more cells, usually of from three to six cells. One cell will produce an electric current of two volts. There is no particular shapes for a storage battery. Sometimes storage batteries are oblong, sometimes square, depending on whether the cells are put in end to end or with flat sides together.

VI

The function of a storage battery in an internal-combustion engine is to produce a current of electricity to furnish, in connection with an ignition system, the spark to set the mixture afire. When a gas engine is used in an automobile the battery may furnish an electric current to light the car and start the engine. In lighting plants, radios, doorbells, railway switches, wireless and fire alarms, the storage battery furnishes the current of electricity to do the work required. In such cases there is no spark produced. A storage battery is not required where a magneto is used, but one can be used. Internal-combustion engines where spark plugs are used, can be used for automobiles, tractors, motor boats, stationary engines or airplanes—in fact for any purpose where an internal-combustion engine can be used. The only use for a spark plug would be in an internal-combustion engine. There are a great many places where a battery can be used that a spark plug can not.

VII

The principle of the storage battery was discovered in 1801 by Gautherot and was further developed by Plante, Faure, Edison, and others from 1860 to 1900. Storage batteries were in use for various purposes long before the automobile was invented. Previous to 1911, when storage batteries were first used in gasoline-propelled automobiles, they were used for train lighting, for internal combustion and stationary engines, signal apparatus, doorbells, and wherever an electric current was required. They were used for electrically propelled cars in 1901, and for wireless as early as 1910. Storage batteries were first used in automobiles in 1911 for the purpose of lighting, and for starting [fol. 20] automobiles in 1912 in the Cadillac only. Storage batteries were used for signalling in the Boer War. In any ignition system using a storage battery it is not possible to create the spark for exploding gasoline in the running of an internal-combustion engine by the use of the battery alone.

VIII

For the past twenty years, storage batteries such as are manufactured by plaintiff have been used in electric automobiles, gasoline-propelled automobiles, motor boats, farm tractors, farm lighting plants, airplanes, for propelling mining cars, for propelling small trucks such as baggage trucks, for summer-camp lighting, for door-bells, in railway switches and for wireless telegraphy, and for other purposes where a dependable source of power is needed; also for radios, telephones, telegraph, and fire alarms, and electroplating.

IX

The plaintiff sells its batteries to garage men, accessory dealers, radio dealers, jobbers, and distributors, and has no means of knowing at the time of sale for what purpose its batteries will be used. Usually a garage man in the country supplies the people in the surrounding country. When plaintiff receives an inquiry for farm lighting or radio batteries, such inquiry would come from a garage. Plaintiff does not know what percentage of its batteries are used for any particular purpose. If the batteries are ordered for radio batteries, there is no way of knowing

whether they are used for that purpose. Manufacturers of automobiles and other commercial commodities use batteries having from three to sixteen cells. Automobile manufacturers as a rule equip their cars with standard batteries.

X

No automobile manufacturers use plaintiff's batteries as standard equipment. Nor does any battery concern sell plaintiff's batteries without plaintiff's name plate. Plaintiff manufacturers several types of batteries. Any one of them could be used in some automobile. No battery was made to fit any particular automobile unless specially ordered. The different types have order numbers. The arrangement of the cells of some types of plaintiff's batteries may limit them to a particular make of automobile, but would not limit them for other uses. This applies to all storage batteries.

XI

All the batteries ever manufactured by plaintiff have had straight terminal posts and are so sold unless otherwise specified. Plaintiff does not manufacture battery terminals and does not know what kinds of terminals are going on its batteries after they are sold. Terminals manufactured by other manufacturers can be used. These terminals can be changed at will and other terminals substituted to suit the purpose for which the batteries are needed as herein enumerated. It would take only a few seconds or minutes to change the terminal. Ninety-nine per cent of the batteries leave the factory with straight terminal post without terminals.

[fol. 21] XII

On July 13th, 1922, plaintiff filed its claim for refund of taxes paid on battery parts sold separately by it and obtained a refund on July 19th, 1923, in the sum of $26,809.82 and interest thereon from October 8th, 1922, to April 8th, 1923, in the sum of $360.63.

XIII

On January 15th, 1924, plaintiff filed with the Commission- of Internal Revenue claim for refund in the total sum of $34,282.14, being $27,841.35 for excise taxes

paid on completed storage batteries, on the dates hereinbefore set forth, $3,403.62 for unpaid interest still due on the previous refund of $26,809.82 taxes paid on battery parts sold separately, and $3,005.91 for interest on said taxes paid on completed batteries from the dates of such payments to January 15th, 1924, at 6% per annum, and $31.26 additionally assessed as penalties and interest. The entire claim for refund was wholly rejected and disallowed by the Commissioner of Internal Revenue, on May 5th, 1924.

XIV

It is admitted that the statute of limitations bars recovery of the amount paid on the sales of storage batteries and as penalties and interest thereon prior to January 15th, 1920, in the sum of $2,566.31, covering the period of March, 1919, to and including December, 1919, and plaintiff waives any claim thereto.

CONCLUSION OF LAW

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and its petition is therefore dismissed.

Judgment is rendered against the plaintiff in favor of the United States for the cost of printing the record in this cause, the amount thereof to be entered by the clerk and collected by him according to law.

See case of Cole Storage Battery Co., 65 C. Cls., 164.

[fol. 22] V. JUDGMENT

At a Court of Claims held in the City of Washington on the 3rd day of December, A. D., 1928, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and its petition is therefore dismissed.

Judgment is rendered against the plaintiff in favor of the United States for the cost of printing in this cause, the amount thereof to be entered by the Clerk a-d collected by him according to law, the amount of which is found to be $66.03.

See case of Cole Storage Battery Co., 65 C. Cls., 164.

VI. Proceedings After Entry of Judgment

On January 7, 1929, the plaintiff filed a motion for a new trial.

On March 11, 1929, the court entered the following order on said motion:

Order

It is ordered this 11th day of March, 1929, that the plaintiff's motion for new trial be and the same is overruled.

On April 30, 1929, the defendant filed a motion for permission to file motion requesting amendment of findings of fact.

Said motion was overruled by the court May 6, 1929.

[fol. 23] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 34,258. Court of Claims. Term No. 127. Universal Battery Company, petitioner, vs. The United States. Petition for writ of certiorari and exhibit thereto. Filed June 4th, 1929. File No. 34,258.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 14, 1929

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(9940)